IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.749 OF 2005

IN

SUIT NO.2114 OF 2004

...

Mr.Shivkumarji Kedia ...Plaintiff

v/s.

Mr.Jagdish Katiyar ...Defendant

...

Mr.B.L.Jain for the Plaintiff.

None for the Defendant.

...

CORAM: D.K.DESHMUKH, J.

DATED: 6TH JUNE, 2006

P.C.:

Heard the learned Counsel for the Plaintiff. Suit

has been filed by the Plaintiff for recovery of the price of the goods. Goods were supplied, according to the Plaintiff, in February, 1999. Present suit has been lodged in April, 2004. Plaintiff relies on acknowledgement of liability by the Defendant. It is at Exh.D. It is dated 22-11-2002. Acknowledgement of liability is not within the period of limitation. Therefore, it will not result in extending the period of limitation. There is an averment in the plaint that on 29-7-1999 payment of Rs.9,980/- was made. Part payment was also made according to the Plaintiff on 15-10-1999. Even if all these dates are accepted, there is no document produced on record to show that payments were made on these dates. Acknowledgement on which reliance is placed is of November, 2002. Therefore, it prima facie appears that the suit may be barred by the law of limitation. Hence, in summary jurisdiction, decree cannot be passed in favour of the Plaintiff.

Summons for judgment is disposed of. Defendant is granted unconditional leave to defend the suit. Defendant to file written statement within a period of eight weeks from today. Suit be transferred to commercial cause list.

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